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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,192	12/16/2003	Laura Leyva	24139.CON1	5511

9355 7590 08/24/2006

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EXAMINER	
HARRIS, CHANDA L	

ART UNIT	PAPER NUMBER
3715	

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/737,192	LEYVA ET AL.	
	Examiner	Art Unit	
	Chanda L. Harris	3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 July 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-6 and 8-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-6 and 8-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-5, and 10-14 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over at least claims 1-10 and 12-13 of U.S. Patent No. 6,663,392 in view of Leyva et al. (US 6,663,392).

1. Claims 1-2 and 6-7 of the patent anticipates application claim 1. Accordingly, application claim 1 is not patentably distinct from patent claims1-2 and 6-7. Here, patent claim 1 requires (a) sequentially presenting to a subject a first plurality of images, each image positioned in a different sector of a display device, the first plurality if images totaling one fewer than a total number of sectors; (b) simultaneously presenting to the subject a second plurality of images, one of the second plurality of images

bearing an analogous relationship to the first plurality of images; and (c) asking the subject to select an analogous image from the second plurality of images. Also, patent claim 2 requires (d) receiving a response from the subject. Moreover, patent claim 6 requires (e) recording the response on a scoring form. Finally, patent claim 7 requires (f) scoring the scoring form to determine a working memory and fluid reasoning indicator. Application claim 1 requires limitations (a)-(f) above. In addition, it would be obvious to automate an otherwise manual process and it is obvious that the computer cannot perform the method without infringing on the performance of the method itself. Thus, it is apparent that at least patent claims 1-2 and 6-7 encompass application claims 1.

2. Claim 3 of the patent anticipates application claim 3. Accordingly, application claim 3 is not patentably distinct from patent claim 3. Here, patent claim 3 requires timing an interval between the second plurality of images presenting step and the response receiving step while application claim 3 requires the same. Thus, it is apparent that patent claim 3 encompasses application claim 3.

3. Claim 4 of the patent anticipates application claim 4. Accordingly, application claim 4 is not patentably distinct from patent claim 4. Here, patent claim 4 requires prompting the subject if a predetermined time has been exceeded without receiving a response while application claim 4 requires the same. Thus, it is apparent that patent claim 4 encompasses application claim 4.

4. Claim 5 of the patent anticipates application claim 5. Accordingly, application claim 5 is not patentably distinct from patent claim 5. Here, patent claim 5 requires if

the received response is incorrect, of indicating that the response was incorrect, and asking the subject to select another image from the second plurality of images while application claim 5 requires the same. Thus, it is apparent that patent claim 5 encompasses application claim 5.

5. Claim 8 of the patent anticipates application claim 10. Accordingly, application claim 10 is not patentably distinct from patent claim 8. Here, patent claim 8 requires wherein the first plurality of images comprises three or five images, and wherein the second plurality of images comprises four or five images while application claim 10 requires the same. Thus, it is apparent that patent claim 8 anticipates application claim 10. Claim 9 of the patent anticipates application claim 11. Accordingly, application claim 11 is not patentably distinct from patent claim 9. Here, patent claim 9 requires wherein the first plurality of images presenting step comprises sequentially presenting the first plurality of images at predetermined intervals while application claim 11 requires the same. Thus, it is apparent that patent claim 9 anticipates application claim 11.

6. Claim 10 of the patent anticipates application claim 12. Accordingly, application claim 12 is not patentably distinct from patent claim 10. Here, patent claim 10 requires wherein the display device comprises a substantially planar matrix comprising the sectors while application claim 12 requires the same. Thus, it is apparent that patent claim 10 anticipates application claim 12.

7. Claim 12 of the patent anticipates application claim 13. Accordingly, application claim 13 is not patentably distinct from patent claim 12. Here, patent claim 12 requires wherein the display device comprises a display screen adapted to display a matrix while

application claim 13 requires the same. Thus, it is apparent that patent claim 12 anticipates application claim 13.

8. Claim 13 of the patent anticipates application claim 14. Accordingly, application claim 14 is not patentably distinct from patent claim 13. Here, patent claim 13 requires steps of determining a demographic indicator of the subject and selecting a first and a second plurality of images commensurate with the demographic indicator while application claim 14 requires the same. Thus, it is apparent that patent claim 13 anticipates application claim 14.

Citation of Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Gevins (US 5,295,491)

  -test working memory by determining if current stimulus matches previous stimulus

- Freer (US 6,097,981)

  -identifying an association between at least 2 images

Conclusion

Applicant's arguments filed 7/18/05 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a double-patenting rejection has been issued. See rejection above. Examiner regrets the delay in the issuance of this rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 571-272-4448. The examiner can normally be reached on M-F 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on 571-272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Chanda L. Harris
Primary Examiner
Art Unit 3715